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7
8 IN THE UNITED STATES DISTRICT COURT
9 FOR THE NORTHERN DISTRICT OF CALIFORNIA

10 UNITED STATES OF AMERICA,) No. CR-07-00503 RMW
11)
Plaintiff,)
12)
vs.) DECLARATION OF COUNSEL IN
13) SUPPORT OF DEFENDANT'S MOTION
ARQUIMEDES MENDOZA-SORIANO,) TO CONTINUE SENTENCING HEARING
14)
Defendant.)
15)

16 I, Cynthia C. Lie, hereby declare as follows:

17 1. I am the Assistant Federal Public Defender who has been assigned to represent
18 defendant Arquimedes Mendoza-Soriano in the above-captioned matter subsequent to the
19 completion of the Presentence Investigation and the departure from the Office of the Federal
20 Public Defender of his prior counsel.

21 2. Mr. Mendoza-Soriano has a petition for writ of habeas corpus currently pending
22 before the Superior Court of California, County of San Joaquin, Docket No. LF007201A. The
23 sentencing hearing in this matter has been continued twice due to the pendency of that petition,
24 having previously been continued due to the substitution of defense counsel. If the Superior
25 Court were to grant habeas relief, Mr. Mendoza's sentencing range under the Guidelines in the
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1 instant case would be reduced from 70-87 months to 46-57 months.

2 3. Following the last continuance in this case, the Honorable Terrence Van Oss of
3 the San Joaquin Superior Court on May 12, 2008 made a preliminary finding that the
4 performance of Mr. Mendoza's then-counsel had been deficient, in that counsel had affirmatively
5 misadvised Mr. Mendoza that the offense to which he would subsequently plead guilty was not a
6 serious felony or "strike" offense. In light of Mr. Mendoza's assertion that he would not have
7 entered his guilty plea but for that affirmative misrepresentation, the Court further ordered the
8 District Attorney to file an informal written response by May 27, 2008 as to whether the
9 conviction should therefore be vacated due to ineffective assistance of counsel.

10 4. On May 29, 2008, I received the response of the District Attorney, in which it
11 disputed the Court's finding of deficient performance by counsel and maintained that Mr.
12 Mendoza was not prejudiced by any error. Mr. Mendoza expects to reply to the District
13 Attorney's response no later than Friday, June 9, 2008.

14 5. On May 29, 2008, following receipt of the District Attorney's response, I e-mailed
15 government counsel and the Probation Office to ascertain whether either would oppose another
16 motion to continue the sentencing hearing to a mutually convenient date. Government counsel
17 responded the evening of May 29, 2008 that it had no objection.

18 6. On May 30, 2008, my legal assistant informed me that she had spoken to United
19 States Probation Officer Brian Casai regarding the instant motion and that he had no objection.

20 I declare under penalty of perjury that the foregoing is true and correct and of my personal
21 knowledge, except as to those matters stated on information and belief, and as to those matters, I
22 believe them to be true.

23 Executed this 30th day of May 2008 in Oakland, California.

24 s/_____
25 CYNTHIA C. LIE
26 Assistant Federal Public Defender